



EXPANSION OF DEFENSIVE AND POSITIVE LEGAL PROTECTION CONCEPTS AND MEASURES TO PROTECT GEOGRAPHICAL INDICATIONS AS PART OF COMMUNAL INTELLECTUAL PROPERTY

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ABSTRACT

The concept of defensive and positive law on Communal Intellectual Property in its development is not sufficient to provide protection for developing countries, including Indonesia, which contain a wealth of living and non-living natural resources. The wealth of these natural resources is often claimed by a foreign nation, either in the form of patents or brands that are economically profitable, without mentioning the source and origin of the discovery. One of them is the claim of a foreign brand which is indicated as geographically originating from Indonesia. This research aimed to offer an idea of the expansion of the protection concept and measures that need to be taken by the government to protect Indonesian Geographical Indications. The method applied in this research was a study of literature sourced from national and international journals through the use of internet media. The results of the study concluded that, First, the defensive and positive legal protection concept that has been known so far requires expansion by adding the protection concept economically in the manner of streamlining a clear management framework from the Regional Government. The said framework must be carried out from upstream to downstream, by ensuring that in the end, the registration of Geographical Indication must be able to prosper the community. Second, the protection of Geographical Indication must be carried out utilizing: Accelerating the collection of data on Geographical Indication nationally, Guiding and supervising the Regional Government to develop local products that have the potential for Geographical Indication, and Establishing special laws.

Keywords: defensive and positive protection; geographic indication; protective measures

1. INTRODUCTION

The World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (IPR) has defined and provided protection for Geographical Indication (GI) as certain types of intellectual property.¹ GI, as is the case with trademark, aims to identify goods originating from a certain region or area, and the particular quality of the good is attributable to its place of origin.² Basically, the success of GI, as an IPR product, is highly dependent on product marketing and promotion which requires the will and hard work of all stakeholders in a country,³ in particular, the role of government and public policy measures taken.⁴ In general, the main challenge for countries in Asia related to the large number of registered GIs that are not used in the market⁵ is the tendency to rush to register Potential Geographical Indications (PGI), but

- 1 B. Kireeva, I. and O'Connor, "Geographical Indications and the TRIPS Agreement: What Protection Is Provided to Geographical Indications in WTO Members?," *The Journal of World Intellectual Property* 13 (2010): 275–303, <https://doi.org/10.1111/j.1747-1796.2009.00374.x>.
- 2 Stephen R. Munzer Kal Raustiala, "The Global Struggle over Geographic Indications," *European Journal of International Law* 18, no. 2 (2007): 337–365, <https://doi.org/10.1093/ejil/chm016>.
- 3 K. Das, "Prospects and Challenges of Geographical Indications in India," *The Journal of World Intellectual Property* 13 (2010): 148–201, <https://doi.org/10.1111/j.1747-1796.2009.00363.x>.
- 4 Giang Hoang & Thuy T. Nguyen, "Geographical Indications and Quality Promotion of Agricultural Products in Vietnam: An Analysis of Government Roles," *Development InPractice* 30, no. 4 (2020), <https://doi.org/10.1080/09614524.2020.1729344>.
- 5 D. Marie-Vivien, "Protection of Geographical Indications in ASEAN Countries: Convergences and Challenges to Awakening Sleeping Geographical Indications," *J World Intellect Prop* 23 (2020): 328–349.

upon registration, there is no guidance, and assistance to make the product remain of high quality, and to ensure farmers to get a fair selling price, including clear and sustainable packaging, promotion, and market share.

Indonesia is a country that has a geographic bonus of 17,499 islands, a water area of 5.8 million km², and a coastline of ±81,000 km.⁶ Indonesia also has 25% of plants and flowering plants in the world with a total of 20,000 species and 40% of which are native to Indonesia.⁷ Of course, this geography bonus must also be realized as a threat from foreign infiltration. This threat is not something new, considering that history has recorded how the Dutch colonized Indonesia for hundreds of years, starting from their interest in the natural wealth of the archipelago. The vast geographical area of Indonesia's land, sea, and air has provided economic benefits if the natural wealth can be developed as a type of Communal Intellectual Property (CIP) that is unique to Indonesia in the form of Potential Geographical Indications (PGI).

However, at the same time, the commercial use of original Indonesian products to obtain their economic rights by developed countries has also occurred, such as in the case of Gayo coffee whose brand was registered under the name *Gayo Mountain Coffee* by *European Coffee Bv* and the case of coffee originating from the South Sulawesi region (Toraja) whose name has been registered and used in the United States of America.⁸ This includes Toraja coffee which refers to the area of origin of South Sulawesi. It turns out that since 1976 the brand has been registered with the Japanese company *Key Coffee Co.*⁹ The claims of developed countries by registering various brands that are Indonesian PGIs show that the legal protection for Indonesian Geographical Indications (GI) is still weak.¹⁰

GI is generally identified with the origin of a product. Who doesn't know, for example, Mozzarella Cheese that comes from Italy, Swiss brand watches that come from Switzerland, Holland Bakery bread that comes from the Netherlands, or Mercedes-Benz cars that come from Germany? These products are not only famous for their indications of origin from certain countries, but also for their quality and reputation. The quality and reputation make the price more expensive than the other similar products. Building the reputation and quality of a product worldwide cannot only depend on the characteristics of the region or origin of a product, more than that it requires determination and hard work which is not for a moment from all stakeholders, especially the state as policy maker. GI is no different from a well-known brand, which is always sought after by consumers because of its quality, even though the price is very expensive. On the other hand, well-known brands are often counterfeited by fraudulent business actors to trick consumers.

In this introductory section, it is necessary to state some of the latest research results related to GI protection, including first, the results of Rifqi Muttaqin's research which concluded that registration of GI products in Gayo Regency required the involvement of the Regional Government (Pemda) in terms of guidance and supervision to ensure quality and distinctive characteristics to be registered and not claimed by other countries.¹¹ Second, the results of Fokky Fuad's and Avvan Andi Latjeme's research concluded that there was a delay in realizing the importance of protection. After a GI product that has economic value is claimed and registered by another country, a sense of ownership of the product arises.¹² Third, the results of

6 Agus Haryanto, "Faktor Geografis Dan Konsepsi Peran Nasional Sebagai Sumber Politik Luar Negeri Indonesia, Jurnal Hubungan Internasional," *Jurnal Hubungan Internasional* 4, no. 2 (2016): 136–47, <https://doi.org/http://dx.doi.org/10.18196/hi.2015.0074>.

7 Agus Hikmat Cecep Kusmana, "Keanekaragaman Hayati Flora Indonesia," *Jurnal Pengelolaan Sumberdaya Alam dan Lingkungan* 5, no. 2 (2015): 187–98, <https://doi.org/10.19081/jpsl.5.2.187>.

8 C Irawan, "Pendaftaran Indikasi Geografis Sebagai Instrumen Perlindungan Hukum dan Peningkatan Daya Saing Produk Daerah Di Indonesia," *Prosiding Seminar Nasional Multi Disiplin Ilmu*, 2017, 358–366.

9 Dara Quthni Effida, "Tinjauan Yuridis Indikasi Geografis Sebagai Hak Kekayaan Intelektual Non-Individual (Komunal)," *Jurnal Ius Civile* 3, no. 2 (2019): 58–71.

10 Kholis Roisah Purnama Hadi Kusuma, "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 107–20.

11 Rifqi Muttaqin, "Analisis Yuridis Peran Pemerintah Kabupaten Gayo Dalam Perlindungan Indikasi Geografis Terhadap Produk Lokal," *LOCUS: Jurnal Konsep Ilmu Hukum* 2, no. 1 (2022): 187–207.

12 Avvan Andi Latjeme Fokky Fuad, "Perlindungan Indikasi Geografis Aset Nasional Pada Kasus Kopi Toraja," *Jurnal Magister Ilmu Hukum (Hukum Dan Kesejahteraan)* 2, no. 2 (2017): 10–16.

N. Nasrianti's research concluded that GI protection must be preceded by a registration process, meaning that it is not automatically protected. Therefore, the government needs to socialize with the public regarding the registration so that regional GI products get protection.¹³ Fourth, results of Lestari Lakalet's research concluded that public legal awareness of the importance of legal protection for Weaving Alor GI was still low. This is due to the lack of information related to the registration of regional GI products.¹⁴ Fifth, results of research by Ibnu Maulana Zahida et al., concluded that in general the community and the local government of Trenggalek Regency have not registered regional PGI so legal protection cannot be carried out either in a preventive or repressive manner.¹⁵

This research will identify from a different perspective. This study aims to examine and analyze two problem formulations, namely: First, how the GI protection concept is expanded as part of CIP. Second, what are the measures to protect GIs that need to be taken by the government? PGI must be protected specially, considering that PGI as part of CIP has differences from aspects of Intellectual Property (IP) in general which are the protection of *individual rights*. GI should be seen as part of IP which is jointly owned (*communal rights*) so management must also be carried out by the community and the Regional Government together. Another difference to be offered in this research is the examination of the protection of GIs as part of CIP not only from a legal perspective but also from other perspectives, through the expansion of the defensive and positive protection concept.

This article is presented with a chapter that begins with the Introduction section which contains how Indonesia's geographical conditions have had a positive economic impact on IP products that have PGI from Indonesia. However, as shown by previous research results, many claims for brand products originating from Indonesian GI had been registered in advance by other countries. The discussion contains an analysis of the problem formulation related to the expansion of the GI protection concept as part of CIP and three measures to protect GI that need to be taken by the government. The closing contains a conclusion.

2. METHOD

The research method used in writing this article is a doctrinal law research method through a qualitative approach. The main data source used comes from relevant written documents to answer research problems. The data obtained were analyzed and explained with a legal approach and a non-legal approach. A non-legal approach is also used as part of an interdisciplinary method to strengthen questions that have not been able to be answered by a legal approach. The non-legal approach used was the economic-management approach from upstream to downstream. GI protection carried out by the government from the center to the regions must be seen comprehensively, how the government is expected not only to carry out legal protection but also includes management aspects, as part of expanding the IP protection concept that is defensive and positive protection. The measure of the success of PGI management will be demonstrated by the level of welfare of the local community, as well as becoming a form of the state's presence in providing justice and welfare for the people.

3. FINDINGS AND DISCUSSION

3.1. Expansion of the Geographical Indication Protection Concept as Part of Communal Intellectual Property

Legal protection cannot be separated from understanding legal theory. In simple terms, legal theory is an opinion, view, and understanding of an object that is related to reality.¹⁶ Legal protection as a basic

13 N. Nasrianti, "Perlindungan Hukum Terhadap Indikasi Geografis Menurut Undang-Undang Nomor 20 Tahun 2016 Tentang Merek Dan Indikasi Geografis," *Jurnal Geuthe* 5, no. 2 (2022): 177–87.

14 Lestari Lakalet, "Perlindungan Hukum Terhadap Tenun Alor Dalam Rezim Indikasi Geografis," *Jurnal Ilmiah Wahana Pendidikan* 8, no. 2 (2022): 103–12.

15 Aditya Satrio Wicaksono Ibnu Maulana Zahida, Sri Reski Putri, "Perlindungan Hukum Potensi Indikasi Geografis Guna Meningkatkan Ekonomi Masyarakat (Studi Pada Kabupaten Trenggalek)," *Jurnal Magister Hukum Udayana* 10, no. 2 (2021): 309–26.

16 Sudikno mertokusumo, *Teori Hukum* (Yogyakarta: Cahaya Atma Pustaka, 2014).

part does not only protect oneself but also includes ownership of personal property and communal property (community). Legal protection according to its principles is also an inseparable part of the state's obligation to realize prosperity in the context of social justice. IPR is basically part of the law on material things. IPR as an intangible material right is actually an object that has value and can be transferred and inherited. Objects that have value certainly need to be regulated legally. The object is defined as the opposite of the subject or person in law. There are also nouns which are used in a narrow sense as things that can only be seen and which are used in a broad sense as one's wealth.¹⁷

IPR as the personification of an object is a work that was born from human intelligence which must be protected and respected by anyone. Based on the obligation to protect and respect, the following basic principles are born, which are: economic, justice, cultural, social, and humanitarian principles.¹⁸ The principle of protecting IPR in general also leads to the birth of protection principles which are more or less the same as CIP, namely:¹⁹ the principle of justice-based protection, conservation protection, maintenance of culture, and prevention of abuse.

Communities and indigenous peoples have long received international recognition as IP owners. This refers to Article 22 of Trade-Related Aspects of Intellectual Property Rights (TRIPS) which implicitly commits to provide recognition and protection of local and communal aspects, where the elements of quality, reputation, and characteristics of good and service have a close relationship with its geographical indication. However, in its development the recognition in the form of CIP legal protection has not been carried out seriously. The hesitation on CIP protection can be seen from how the government has not owned a clear pattern of approach, whether it wants to form a special law or prioritize the inventory process. The inventory process, which has been initiated since 2017, seems to be running slowly. Conceptually, CIP protection recognizes 2 (two) models of protection. The first is defensive protection, which is a protection model that prevents²⁰ other parties from taking over intellectual property rights. The second is positive protection which is realized by the formation of laws and regulations.²¹ These two forms of protection actually have weaknesses, because both defensive and positive protection must be followed by other aspects to be realized. Preventive protection will be successful if it is followed by strong and accurate CIP data collection aspects, including communication and coordination between related agencies. Likewise, regulatory protection in the form of regulations must also be followed by aspects of law enforcement.

Indonesia and China have similarities in the legal protection of CIP which applies the concept of defensive protection.²² For positive protection, Indonesia has not owned a special law regarding PGI and other CIP aspects. Preventive protection really requires a strong and accurate database. Seeing the vast territory of Indonesia, this is not an easy job, but it is not impossible to do. The problem is how serious all relevant agencies are in carrying it out, especially the regional government which knows the characteristics of their area and what GIs have the potential to be developed.

Therefore, the protection of GI as part of CIP should not only be carried out with a normative legal approach but must be expanded with a non-legal approach, in this case, it can be expanded with an economic protection approach. Marks indicating the area of origin that are registered both as patents and trademarks should have an economic impact on the people of origin. Hence, to protect Indonesian GI, it is necessary to expand the concept of defensive protection and positive protection by adding economic protection, as shown in the figure below:

17 R. Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2003).

18 Elsi Kartika Sari dan Advendi Simangunsong, *Hukum Dalam Ekonomi* (Jakarta: Gramedia Widiasarana Indonesia, 2005).

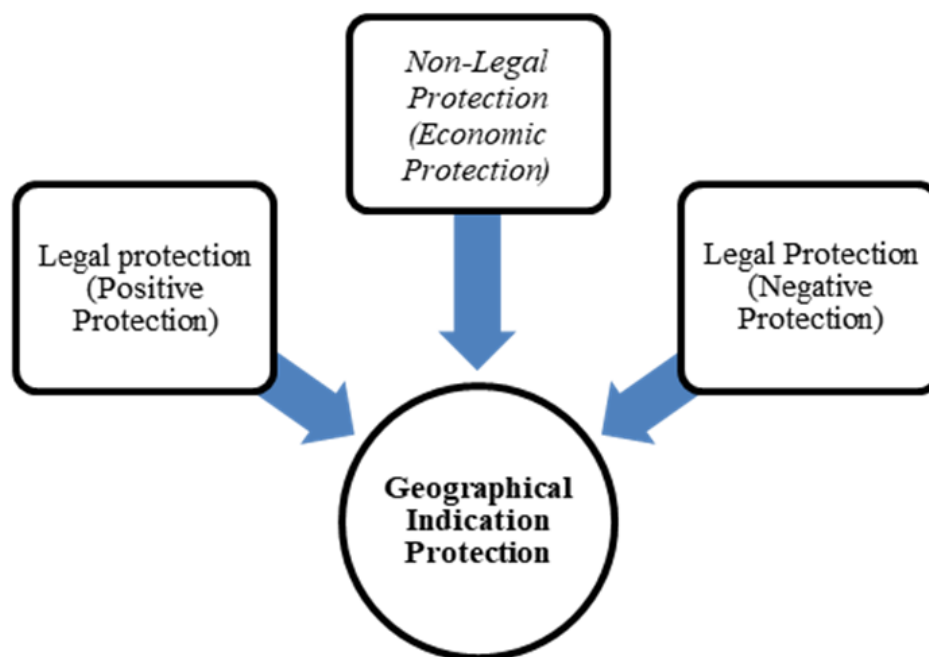
19 Maya Ruhtiani, "Perbandingan Perlindungan Hukum Hak Kekayaan Intelektual Komunal Antara Indonesia Dan China," *Jurnal Ilmiah Universitas Batanghari* 2, no. 2 (2022): 886–91, <https://doi.org/DOI.10.33087/jiubj.v22i2.2025>.

20 Maya Ruhtiani.

21 Ria Wierma Putri dan Rehulina Yunita Maya Putri, "Perlindungan Bagi Hak Kekayaan Intelektual Komunal," *Jurnal Hukum De'rechtsstaat* 7, no. 2 (2021).

22 Maya Ruhtiani, "Perbandingan Perlindungan Hukum Hak Kekayaan Intelektual Komunal Antara Indonesia Dan China."

Figure 1. Expansion of Defensive Protection and Positive Legal Protection Concepts



Source: Data is processed from primary legal materials in the form of books and journals.

The expansion of GI's legal protection by adding economic protection must be seen from a management perspective. The government, especially the regional government, must provide assistance from the upstream starting from the planning and registration process to the downstream by conducting evaluations and continuous improvements. PGI is actually not only seen from the characteristics and uniqueness aspects that indicate a region or origin of goods and services but must be able to maintain its quality.

In the planning stage, each regional government must first collect data on GI owned by the region. Then from the recorded GI, they can determine which GI products have the potential to be developed. Determining which PGI to be developed must also pay attention to consumers and their market share. This means that it must be calculated that there is a profit margin that can be obtained by the local community, only then the said PGI is registered. The next stage is to conduct a periodic evaluation for continuous development. Therefore, GI does not only end at the registration stage, the most important thing is how to maintain the product quality, which in turn will provide benefits for the local community.

3.2. Measures of Geographical Indication Protection that Need to be Taken by the Indonesian Government

The history of the civilization of a nation is largely determined by the culture of its people, starting from primordial communities, and industrial communities to modern and prosperous communities or nations. The formation of the condition of the community and the nation in each phase does not happen by itself but is determined by the will and ability to achieve it. The achievements of countries that are currently called modern and developed countries, one of which is also determined by the intellectual intelligence of each human being. Intellectual intelligence to create "something" that is economically valuable is then known as Intellectual Property Rights (IPR), like tangible objects.

The recognition of IPR as an intangible object that must be protected was born and developed since the beginning of human civilization. This can be traced back to how the school of natural law recognizes

human existence, including the recognition of human intellectual work itself.²³ The natural laws, as initiated by thinkers such as Aristotle and Thomas Aquinas, have provided a progressive view that recognition of humans is not merely a creature created by God but also a recognition of what they produce as rational beings.²⁴

In its development, IPR is not only recognized as individual ownership rights but is currently developing the idea of recognizing communal ownership rights, as joint ownership rights of indigenous peoples. However, the recognition of CIP is still being debated considering that IPR was born from the TRIPS international convention which is individual protection. The birth of Law Number 20 of 2016 concerning Trademarks and GI (Trademark and GI Law) seems to reinforce this debate, how then one law simultaneously regulates two different concepts of IP.²⁵

Theoretically, the naming of the Trademark and GI Law is very likely to be debated, considering that these two objects have sharp differences in terms of ownership. Trademarks as part of TRIPS from the start are intended for individual ownership, while GIs are actually communal ownership of an indigenous community which, due to its regional characteristics, has existed and been maintained for a long time. GI is basically a part of CIP. CIP itself consists of²⁶ Traditional Knowledge, Traditional Cultural Expressions, Genetic Resources, and Geographical Indications.

GI is a sign that is directed to an area of origin that is influenced by natural and human factors that shows the characteristics, quality, and reputation of a product of goods and services²⁷ while maintaining, protecting, and preserving traditional handicraft products.²⁸ GI also has economic potential that can provide added value commercially because its authenticity is only produced in one region and cannot be produced in other regions.²⁹

Legal protection for GI cannot be separated from the international perspective to protect CIP. Long discussions at the international level regarding the determination of providing legal protection for CIP with economic value owned by developing countries have signaled the existence of interests from developed countries toward developing countries. Indirectly, developed countries actually tend to wish this condition to continue, so that they can still use CIP under justification as a world cultural heritage to apply for patents and brands to gain economic benefits from the registration.

The construction of international law governing GI is contained in several conventions, namely: the 1983 Paris Convention for the protection of industrial property, the 1891 Madrid Agreement for the prosecution of false or fraudulent indications of the source of goods, the 1958 Lisbon Agreement for the protection of designations of origin and international registration, the 1995 TRIPS Agreement and the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications 2015 (Geneva Act). These international provisions regulate and consider how important it is to protect GI. The main part of this international provision tries to offer the concept of legal protection for goods and/or services based on place or area of origin.³⁰

Conceptually GI comes from the French Appellation of Origin (AOO) regime, which tries to initiate a maximum level of protection for GI violations. Most European countries like the idea because the TRIPS Agreement only considers minimum standards of protection. The discussion regarding the protective nature of

23 Darji Darmodihardjo & Sidharta, *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia* (Jakarta: Gramedia Pustaka Utama, 1995).

24 Mohamad Djumhana & Djubaedillah R, *Hak Milik Intelektual: Sejarah, Teori, dan Praktek* (Bandung: Citra Aditya Bakti, 1993).

25 Yunita Maya Putri, "Perlindungan Bagi Hak Kekayaan Intelektual Komunal."

26 Yunita Maya Putri.

27 Dewi Sulistianingsih dan Vivie Novinda Sekar Putri Yuli Prasetyo Adhi, "Membangun Kesejahteraan Masyarakat Lokal Melalui Perlindungan Indikasi Geografi," *Jurnal Meta Yuridis* 2, no. 1 (2019): 1–12.

28 P. Covarrubia, "Geographical Indications of Traditional Handicrafts: A Cultural Element in a Predominantly Economic Activity," *IIC- International Review of Intellectual Property and Competition Law* 50 (2019): 441–66. <https://doi.org/10.1007/s40319-019-00810-3>

29 Suhaidi dan Suharmi Balqis Siagian, Saidin, "Perlindungan Hukum Atas Indikasi Geografis Di Kabupaten Tapanuli Utara," *Iuris Studia* 2, no. 3 (2021): 653–663.

30 T. Adebola, "The Legal Construction of Geographical Indications in Africa," *JWIP*, 2022, 1– 27, <https://doi.org/10.1111/jwip.12255>.

the GI regime has reached new commitments during the post-TRIPS era in the form of a Free Trade Agreement (FTA). On the other hand, the United States is trying to ensure that GI is subject to the trademark legal system.³¹

On the other hand, GI is often juxtaposed with PT which has similarities because both are community-based. Collective rights are the marker of the role of community knowledge, practices, and beliefs as a form of collective ownership. Regional specificity and GI diversity are protected not only under general laws but in certain countries, they are protected under specific laws,³² as done by several developing countries with large PGIs.

In its development, GI protection has been initiated by countries with large natural wealth. In Nigeria, for example, as noted by Oke, E.K., it is recommended that Nigeria initiate the enactment of laws on a *sui generis* basis to provide protection for GIs. This will enable GIs from Nigeria to be effectively protected at home and abroad.³³

India, which has cultural diversity, produces many unique products. These products are the preservation of local community knowledge that has a close relationship with the GI of origin. India itself already has a GI law that is *sui generis* in nature starting from 1999 with a total of 400 GIs registered in various categories of goods and/or services.³⁴ Furthermore, India also carries out GI quality assurance activities as an economic basis to protect GI. In India, areas that have a wealth of flora and fauna get protection facilities with maximum registration.³⁵

Starting from 2016, Indonesia has regulated GI based on the Trademark and GI Law, which provides the definition of GI as part of a brand as stipulated in the Trademark and GI Law. Article 1 point 6 of the Trademark and GI Law stipulates that GI is the origin or sign indicating the origin of a product of goods and services which due to geographical environmental factors including natural factors, human factors, or a combination of these two factors give a certain characteristic to goods produced, reputation and product quality, for example, the production of public goods and services.

Until today, Indonesia has not specifically regulated communal intellectual property rights (*sui generis*). New legal protection is carried out based on general laws, for example, Traditional Cultural Expressions which are regulated as part of Copyright, including GI as part of Trademark and GI. According to data on the website of the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia, there are not too many recorded PGIs when compared to India's PGIs which have almost similar geographical characteristics to Indonesia. It must be realized that not all GIs have the potential to be developed because GI development needs to pay attention to whether the product sells well in the market or not. PGI which is on the website of the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia, is shown in the graphic below:

31 K.D. Hari, A.S., Raju, "Free Trade Agreements and Geographical Indications Standards in Asia.," in *Geographical Indication Protection in India*, ed. N.S. Bhattacharya (Singapore: Springer-Verlag, n.d.), 2022, https://doi.org/10.1007/978-981-19-4296-9_3.

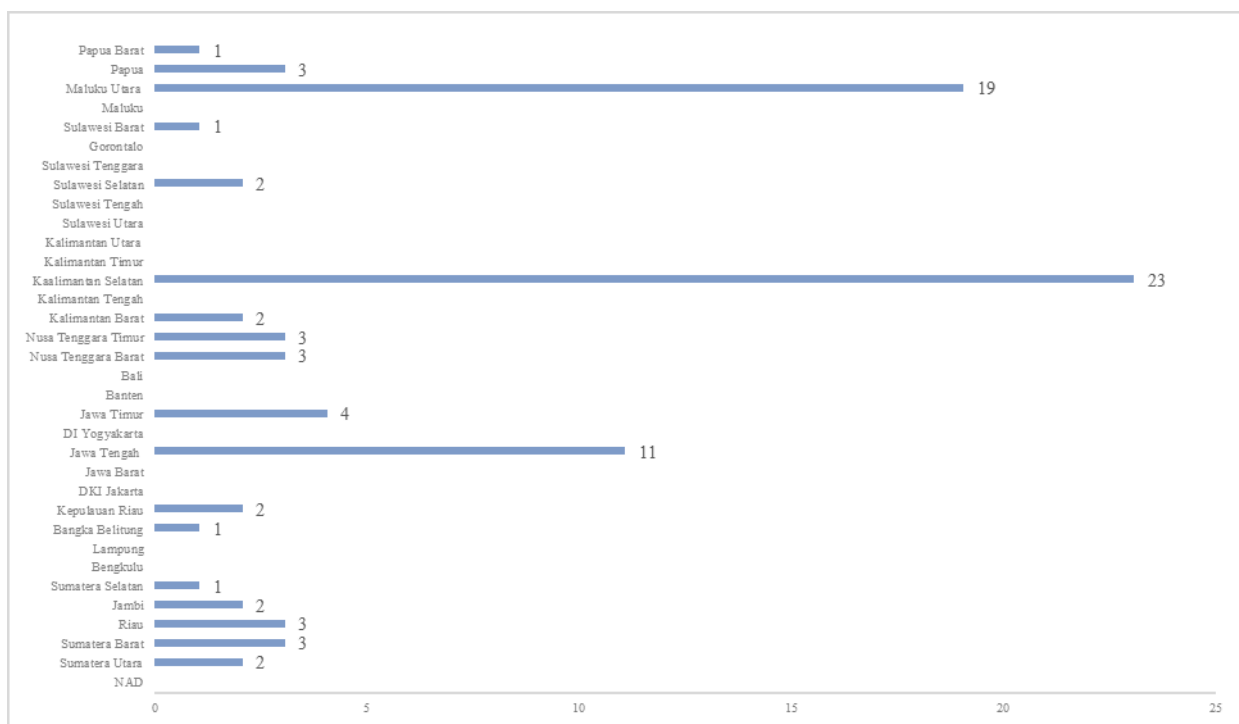
32 Manchikanti Jose, A., "Protection of Geographical Indication: The Interface with Traditional Knowledge," in *Geographical Indication Protection in India*, ed. N.S. Bhattacharya (Singapore: Springer-Verlag, 2022), https://doi.org/10.1007/978-981-19-4296-9_3.

33 E. K. Oke, "Rethinking Nigerian Geographical Indications Law," *The Journal of World Intellectual Property* 25 (2022), <https://doi.org/Property, 25, 746752>.

34 N.S. Datta, S., Bhattacharya, "Geographical Indication Protection System in India," in *Geographical Indication Protection System in India*, ed. N.S. (eds) Bhattacharya (Springer-Verlag, 2022), https://doi.org/10.1007/978-981-19-4296-9_1.

35 K. Bhattacharya, N.S., Tiwari, "A Study on the Quality Control and Enforcement of Registered Geographical Indication Goods in India," in *Geographical Indication Protection in India* (Singapore: Springer-Verlag, 2022), https://doi.org/10.1007/978-981-19-4296-9_2.

Graph 1. Potential Geographical Indications of Indonesia by Province

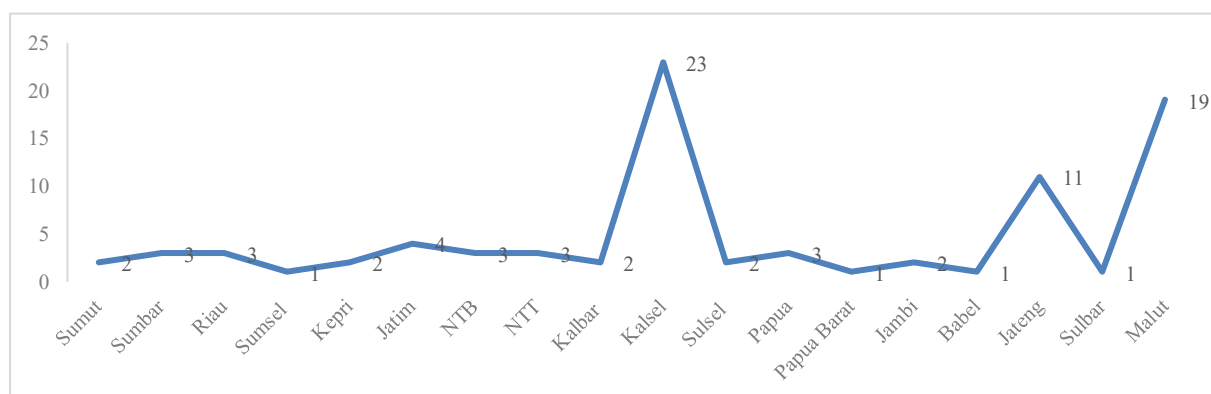


Source: <https://kikomunal-indonesia.dgip.go.id/>, data processed up to 23 December 2022.

Of the 35 provinces throughout Indonesia, only 51% (18 provinces) have their PGI recorded with the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia. This means that there are still approximately 50% of provinces that do not have GI records. This condition is influenced by various factors, including the lack of knowledge and understanding on the part of the Regional Government and related agencies regarding the economic value of their regional PGI, or indeed the assumption that indications of regional products have not owned enough potential to be developed. These two factors can be concluded considering that there are still many local governments that are not aware of both their regional PGI and the registration process. On the other hand, PGIs, which have been registered to the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia, when looked at in practice, are not well known in the national and international markets, meaning that the potential of these products still needs to be proven economically.

The 18 provinces that have PGI records at the Directorate General of Intellectual Property, Ministry of Law and Human Rights of the Republic of Indonesia can be seen in the graph below:

Graph 2. Potential Geographical Indications in 18 Provinces



Source: <https://kikomunal-indonesia.dgip.go.id/>, data processed up to 23 December 2022.

Of the 18 provinces with PGI records, the 3 largest provinces are South Kalimantan, North Maluku, and Central Java. The overview of the PGIs and their types in the 3 provinces referred to can be seen in the following table:

Table 1. Number of PGIs and their Types in South Kalimantan

NO.	POTENTIAL GEOGRAPHICAL INDICATIONS	TYPE
1.	Nanas Songalai Tabalong	Fruit
2.	Ubi Nagara	Crops
3.	Talas Loksado	Crops
4.	Kacang Nagara	Non-Staple Food Crops
5.	Durian Mahlawin Malutu	Fruit
6.	Durian Mahlawin Hamak	Fruit
7.	Kemiri	Spice Plants
8.	Kasturi	Fruit
9.	Duku Padang Batung	Fruit
10.	Beras Hitam Gaib	Crops
11.	Pisang Tundang	Fruit
12.	Durian Siduduk Lumbang	Fruit
13.	Durian Pempakin Merah	Fruit
14.	Durian Layung Pujung	Fruit
15.	Durian Likol Santuun	Fruit
16.	Durian Likol Kunign	Fruit
17.	Durian Layung Burum	Fruit
18.	Durian Gantarbumi Uya	Fruit
19.	Durian Likol Burum	Fruit
20.	Durian Kamundai Merah	Fruit
21.	Durian Kamundai Kuning	Fruit
22.	Durian Taradak Uya	Fruit
23.	Kayu Manis Loksado	Cinnamon

Source: <https://kikomunal-indonesia.dgip.go.id/>, data processed up to 23 December 2022.

Table 2. Number of PGIs and Their Types in North Maluku

NO.	POTENTIAL GEOGRAPHICAL INDICATIONS	TYPE
1.	Pala Ternate 1	Nutmeg
2.	Boci Sawala Pandanga	Peanuts
3.	Kasbi Juanga 1	Cassava
4.	Ubi Kayu Moro	Cassava
5.	Kasbi Juanga 2	Cassava

6.	Ubi Kayu Moro Juanga	Cassava
7.	Ubi Kau Kuning Morotai	Cassava
8.	Anggrek Wayabula	Dendrobium Antenatum
9.	Kelapa Bido	Coconut
10.	Ubi Jalar Putih Morotai 2	Sweet potato
11.	Ubi Jalar Putih Morotai 1	Sweet potato
12.	Padi Pulo Daare	Upland Rice
13.	Padi Pulo Merah Morotai	Upland Rice
14.	Padi Ladang Malaikat Daare	Upland Rice
15.	Kacang Tanah Putih Pandanga	Cowpea
16.	Padi Ladang Melewa	Upland Rice
17.	Padi Ladang Malikat Merah	Upland Rice
18.	Padi Ladang Tamo Siang Marotai	Upland Rice
19.	Ubi Kayu Nakamura	Cassava

Source: <https://kikomunal-indonesia.dgip.go.id/>, data processed up to 23 December 2022.

Table 3. Number of PGIs and their types in Central Java

NO.	POTENTIAL GEOGRAPHICAL INDICATIONS	TYPE
1.	Kopi Surjo	Coffee
2.	Batik Gringsing Batang	Batik
3.	Beras Rojolele Sriten	Rice
4.	Beras Rojolele Srinar	Rice
5.	Beras Rojolele Srinuk	Rice
6.	Kopi Liberika Wonogiri	Coffee
7.	Kopi Robusta Wonogiri	Coffee
8.	Batik Wonogiren	Batik
9.	Kopi Muria	Coffee
10.	Tenun Troso	Woven fabric
11.	Batik Sogan Solo	Batik

Source: <https://kikomunal-indonesia.dgip.go.id/>, data processed up to 23 December 2022.

Observing the data in (tables 1, 2, and 3), the 3 provinces with the largest PGI records (South Kalimantan, North Maluku, and Central Java) for fruit types such as durian and sweet potato are actually not very popular nationally let alone to compete internationally. Therefore, Indonesia needs to establish strategic steps to develop and protect the existing PGIs, at least by taking the 3 following steps:

3.2.1. Acceleration of GI Data Collection Nationally

Theoretically, the success of each activity requires data and information assistance, including in decision-making. Information is an important requirement for every organization, both private and government,³⁶

36 Muslih Fathurrahman, "Pentingnya Arsip Sebagai Sumber Informasi," *Jurnal Ilmu Perpustakaan Dan Informasi* 3, no. 2 (2018): 215–25.

including GI as part of CIP. PGI data collection nationally is expected to provide an overview of which GI's provinces have the potential, characteristics, quality, and uniqueness as well as the economic value.

Data collection through inventory has been carried out by Indonesia since 2017 based on Minister of Law and Human Rights Regulation Number 13 of 2017 concerning Data on Communal Intellectual Property, with the aim of protecting Indonesia's cultural diversity, either those with PT, EBT, SDG, or PGI values. These various forms of CIP are the basic capital of national development, therefore this inventory activity is expected to be the beginning of activities to protect, preserve, develop, and utilize all CIP that have economic value.

However, referring to the data available on the website of the Directorate General of Intellectual Property, Ministry of Law and Human Rights, the increase in the number of inventories is not significant enough. Prior to 2017, CIP data collection was spread across various Ministries and Institutions such as LIPI, the Ministry of Education and Culture, and the Ministry of Environment. Therefore, to accelerate data collection and inventory of various Indonesian CIP, especially PGI, determined efforts are needed from the Ministry of Law and Human Rights, including cooperation from related Ministries and Institutions and the Regional Government. The Ministry of Law and Human Rights needs to make a measurable agenda and framework along with achievement targets in 5 years with an annual evaluation of the level of success and obstacles so that in the next 5 years GI can be obtained from any province that has the potential to be developed nationally or for ASEAN level. At the same time, the local government together with its SKPD (Regional Government Work Unit) also needs to make a concrete and measurable plan and framework to facilitate the registration of PGIs in their respective regions, taking into account the potential for quality and marketable products and coaching and mentoring for the welfare of local communities.

3.2.2. Guidance, Supervision, and Development of Regional Local Products with PGI

An economy with an intellectual knowledge base is a new paradigm today. This paradigm has made the unregistered GIs become targets for fraudulent economic actors to exploit and market products such as individual IP. This condition will ultimately be detrimental to local communities in making and trading these products in the first place.³⁷ Legal protection for GI can only be obtained after the registration process. However, GIs that are considered to have economic potential is certainly not done within the issuance of a registration certificate. Communities and local governments need to realize that the more important goal is to provide more differences in the economic benefits of GI owners from the conditions prior to and upon the provision of GI protection by the state. Therefore, inter-agency coordination is needed in the framework of GI monitoring and sustainability.³⁸

The local government must carry out guidance, supervision, and legal protection for regional products that have PGI. After obtaining the GI certificate, it is expected that it will encourage the creation of fair business competition which in turn provides protection for both business actors and consumers while increasing the welfare of farmers. Local governments need to make rules of the game, by making regional regulations that are in favor of the welfare of farmers. The regional government must be able to ensure the availability of subsidized seeds and fertilizers, health insurance for farmers, and control over the lowest price standards, as well as the availability of markets for farmers' products.³⁹

Therefore, the regional government together with the SKPD in their respective regions needs to create a concrete and measurable framework for a 5-year work plan. The first is to collect data on GI products that are unique, of high quality, and have a sale value and behavior in the market. The second is to register GI at the Directorate General of Intellectual Property at the Ministry of Law and Human Rights, which initially does not have to be in big numbers but those which have economic potential. The third is to carry out continuous

37 C. Geiger and others, "Towards a Flexible International Framework for the Protection of Geographical Indications," *TWIPOL* 1, no. 2 (2010): 147.

38 S. A. Asri, D. P. B., Sriyono, E., Hapsari, M. A., & Syahrin, "Valuing Local Heritage: Issue and Challenges of Geographical Indication Protection for Local Artisans in Indonesia Kasongan Village Heritage," . . *The Journal of World Intellectual Property* 25 (2022): 71– 85, <https://doi.org/10.1111/jwip.12206>.

39 M. Rendi Aridhayandi, "Peran Pemerintah Daerah Dalam Pelaksanaan Pemerintahan Yang Baik (Good Governance) Dibidang Pembinaan Dan Pengawasan Indikasi Geografis," *Jurnal Hukum Dan Pembangunan* 48, no. 4 (2018): 883–902, <http://dx.doi.org/10.21143/jhp.vol48.no4.1807>.

coaching and guidance to local people on how to maintain the quality of GI products that have been registered.

3.2.3. Establishment of Special Laws

Indonesia is a country that has cultural diversity and biodiversity owned by indigenous peoples. The state has a special interest in a legal protection system based on GI which is communal. Currently, Indonesia has carried out the mandate to protect GI that is granted through TRIPS based on the Trademark and GI Law.⁴⁰ As is the case with Law Number 28 of 2014 concerning Copyright which regulates EBT, the Trademark and GI Law has similarities in the arrangements for matters that are communal into individual IP. This suggests the coercion of regulations to regulate two things that are actually different. Therefore, special regulation of GI (*sui generis*) in the future is a necessity, considering that GI as part of CIP, has uniqueness and characteristics that make it different from IP aspects in general such as copyright and industrial property rights.

GIs and trademarks basically have the same function and purpose as a differentiating sign of a product or service. As in a trademark, for example, besides being a sign, it is actually also used as a tool to attract consumers to buy. On the other hand, consumers' buying interest also depends on quality and price, although there are times when consumers tend to "ignore" prices as long as the product is of good quality. The same is the case with GI, a product indicating a specific origin or region depending on its potency. Products that show a certain GI will not be seen by consumers if they are not of in good quality. Therefore, the keyword from GI itself is its potential, especially to maintain the original taste as a product that has a reputation and certain regional characteristics. It is this potential that must be managed by the government.

4. CONCLUSION

Based on the the foregoing discussion it can be concluded that **First**, the expansion of the GI legal protection concept can be done by adding economic protection from a management perspective. The regional government must provide assistance from the upstream starting from the planning and registration process to the downstream by conducting continuous evaluations and improvements. **Second**, 3 steps that must be taken by the government in the framework of protecting Indonesian GIs are: 1) Accelerating GI data collection nationally. The Ministry of Law and Human Rights must be more proactive as the coordinator of the National CIP Data Center and cooperation from related Ministries and Institutions, especially the Regional Government is needed; 2) The regional government must carry out guidance, supervision, and development of regional local products that have PGI through a series of forming regional regulations that are pro-local communities; 3) For the long term, it is necessary to plan the establishment of special GI regulations on a *sui generis* basis.

From the conclusions of the research results, this article suggests that the Regional Government as the agency that understands the characteristics of the region best needs to carry out an even more massive inventory and collection of regional Geographical Indications and ensure that the registration of Potential Geographical Indications for the region has a positive impact on encouraging economic growth and the welfare of its people.

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